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5 **BEFORE THE**
6 **BOARD OF REGISTERED NURSING**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 2012-703

10 **KELLY ANN FAIRRES aka**
11 **KELLY ANN SANDARG**
12 **3985 Oak Ridge Circle**
13 **Norco, CA 92860**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Registered Nurse License No. 690103**

Respondent.

15 **FINDINGS OF FACT**

16 1. On or about May 16, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official
17 capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of
18 Consumer Affairs, filed Accusation No. 2012-703 against Kelly Ann Fairres aka Kelly Ann
19 Sandarg (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit
20 A.)

21 2. On or about October 6, 2006, the Board of Registered Nursing (Board) issued
22 Registered Nurse License No. 690103 to Respondent. The Registered Nurse License was in full
23 force and effect at all times relevant to the charges brought in Accusation No. 2012-703 and
24 expired on January 31, 2012. Pursuant to Business and Professions Code section 118(b), the
25 lapse in licensure does not deprive the Board of its authority to institute or continue this
26 disciplinary proceeding.

27 3. On or about May 16, 2012, Respondent was served by Certified and First Class Mail
28 copies of the Accusation No. 2012-703, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
3 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
4 of record was and is:

5 3985 Oak Ridge Circle
6 Norco, CA 92860.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about May 24, 2012, the signed Certified Mail Receipt was returned to our
11 office indicating a delivery date of May 19, 2012.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2012-
20 703.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 2012-703, finds

1 that the charges and allegations in Accusation No. 2012-703 are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$4,834.24 as of July 2, 2012.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Kelly Kelly Ann Fairres aka
8 Kelly Ann Sandarg has subjected her Registered Nurse License No. 690103 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
11 Nurse License based upon the following violations alleged in the Accusation which are supported
12 by the evidence contained in the Default Decision Evidence Packet in this case:

13 a. Respondent has subjected her license to disciplinary action under sections 490 and
14 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
15 related to the qualifications, functions, and duties of a registered nurse when she was convicted of
16 grand theft on February 19, 2010.

17 b. Respondent has subjected her license to disciplinary action under sections 490 and
18 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
19 related to the qualifications, functions, and duties of a registered nurse when she was again
20 convicted of grand theft on May 6, 2010.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 690103, heretofore issued to Respondent Kelly Ann Fairres aka Kelly Ann Sandarg, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on DECEMBER 14, 2012.

It is so ORDERED NOVEMBER 16, 2012

Raymond Thall

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

70592551.DOC
DOJ Matter ID:SD2011801872

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2012-703**

12 **KELLY ANN FAIRRES aka KELLY ANN**
13 **SANDARG**
14 **3985 Oak Ridge Circle**
Norco, CA 92860

A C C U S A T I O N

15 **Registered Nurse License No. 690103**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about October 6, 2006, the Board of Registered Nursing issued Registered
24 Nurse License Number 690103 to Kelly Ann Fairres aka Kelly Ann Sandarg (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and expired on January 31, 2012.

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2 **JURISDICTION**

3 3. This Accusation is brought before the Board of Registered Nursing (Board),
4 Department of Consumer Affairs, under the authority of the following laws. All section
5 references are to the Business and Professions Code unless otherwise indicated.

6 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
7 any licensee, including a licensee holding a temporary or an inactive license, for any reason
8 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license. Under section 2811,
12 subdivision (b) of the Code, the Board may renew an expired license at any time within eight
13 years after the expiration.

14 **STATUTORY PROVISIONS**

15 6. Section 482 of the Code states:

16 Each board under the provisions of this code shall develop criteria to evaluate
17 the rehabilitation of a person when:

18 (a) Considering the denial of a license by the board under Section 480; or

19 (b) Considering suspension or revocation of a license under Section 490.

20 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

21 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
22 revoke a license on the ground that the licensee has been convicted of a crime substantially
23 related to the qualifications, functions, or duties of the business or profession for which the
24 license was issued.

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to
28 suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the

licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct.

". . . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"...

(c) Theft, dishonesty, fraud, or deceit."

11. California Code of Regulations, title 16, section 1445 states:

". . . .

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation,

1 restitution or any other sanctions lawfully imposed against the licensee.

2 (5) If applicable, evidence of expungement proceedings pursuant to Section
3 1203.4 of the Penal Code.

4 (6) Evidence, if any, of rehabilitation submitted by the licensee.

5 COSTS

6 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 FIRST CAUSE FOR DISCIPLINE

11 **(February 19, 2010 Criminal Conviction for Grand Theft on January 17, 2010)**

12 13. Respondent has subjected her license to disciplinary action under sections 490 and
13 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
14 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
15 follows:

16 a. On or about February 19, 2010, in a criminal proceeding entitled *People of the*
17 *State of California v. Kelly Ann Fairres*, in Riverside Superior Court, case number
18 RIM10001054, Respondent was convicted on her plea of guilty of violating Penal Code section
19 487, subdivision (a), grand theft, a misdemeanor.

20 b. As a result of the conviction, on or about February 19, 2010, Respondent was
21 sentenced to three years summary probation, committed to jail for 5 days, served on the
22 weekends, ordered to pay \$450 in fines, and to pay restitution in an amount to be determined.

23 c. The facts that led to the conviction are that on or about January 17, 2010, in the
24 City of Riverside, Respondent shoplifted merchandise from Macy's Department Store of a value
25 exceeding \$400.00. On that day, Respondent walked through the store, removed price tags, and
26 placed various items in her purse, including a handbag, sunglasses, clothing, and jewelry. She
27 then purchased one item and left the store, failing to pay for the other items. When confronted
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1 outside the store, Respondent admitted to the loss prevention staff that she took the items for no
2 reason. She stated: "I don't know why I stole." The items taken amounted to \$480.40.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(August 26, 2010 Criminal Conviction for Grand Theft on May 6, 2010)**

5 14. Respondent has subjected her license to disciplinary action under sections 490 and
6 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
7 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
8 follows:

9 a. On or about August 26, 2010, in a criminal proceeding entitled *People of the*
10 *State of California v. Kelly Ann Fairres*, in Riverside Superior Court, case number RIF10005494,
11 Respondent was convicted on her plea of guilty of violating Penal Code section 487, subdivision
12 (a), grand theft, a misdemeanor.

13 b. As a result of the conviction, on or about August 26, 2010, Respondent was
14 sentenced to three years summary probation, to 120 days in Sherriff's custody, was ordered to pay
15 \$858.45 in fines, and to pay restitution in an amount to be determined.

16 c. The facts that led to the conviction are that on or about May 6, 2010, in the City
17 of Riverside, Respondent took merchandise from a Target Store of a value exceeding \$400.00.
18 On that day, Respondent walked through the store, removed price tags, and placed 45 items in her
19 purse, including cosmetics and jewelry. When confronted outside the store, Respondent admitted
20 to the loss prevention staff that she took the items and could not explain why she took them. The
21 items taken amounted to \$425.66. She then admitted to the police that she was on probation for a
22 prior shoplifting conviction.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number 690103, issued to Kelly
27 Ann Fairres aka Kelly Ann Sandarg;
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1 2. Ordering Kelly Ann Fairres to pay the Board of Registered Nursing the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED:

May 16, 2012

Stacy Brown

for LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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